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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DANA BOSTICK, et al.,

Plaintiffs,

v.

HERBALIFE INTERNATIONAL
OF AMERICA, INC., et al.,

Defendants.

CASE NO: 2:13-cv-02488-BRO-SHC

TRUTH IN ADVERTISING, INC.'S
REPLY TO PLAINTIFFS' OPPOSITION
TO MOTION FOR LEAVE TO FILE
BRIEF AS *AMICUS CURIAE*

Assigned to:
Hon. Beverly Reid O'Connell

Date: May 11, 2015
Time: 1:30 p.m.
Courtroom: 14

It comes as no surprise that plaintiffs' counsel – who stand to receive \$5.25 million dollars if this settlement is approved – are asking the Court to ignore Truth in Advertising, Inc.'s (TINA.org's) opposition to the proposed settlement, arguing that an independent, not-for-profit consumer advocacy organization does

1 not speak for consumers' interests. This argument is belied by the courts that
2 have granted TINA.org *amicus curiae* status and the settlements that have been
3 modified to address issues and legal concerns independently raised by TINA.org.
4 *See Lerma v. Schiff Nutrition Int'l, Inc.*, Case No. 11-cv-1056 (S.D. Cal.), [Order](#)
5 [Granting Motion to File Amici Curiae Brief, dated Mar. 26, 2015 \(Dkt No. 135\)](#)
6 (prior to this Order, plaintiffs moved to withdraw from the proposed settlement as
7 no longer worthy of court approval citing TINA.org's anticipated objection. *See*
8 Dkt Nos. [120](#) and [124](#)); *Hazlin v. Botanical Labs.*, Case No. 13-cv-0618 (S.D.
9 Cal.), [Order Granting Truth in Advertising, Inc.'s Motion for Leave to File Brief](#)
10 [as Amicus Curiae in Opposition to Proposed Settlement, dated Feb. 18, 2015](#)
11 [\(Dkt No. 50\)](#); *Volz v. Coca Cola Co.*, Case No. 10-cv-879 (S.D. Ohio), [Order](#)
12 [Granting TINA.org's Motion for Leave to File Amicus Brief, dated Dec. 2, 2014](#)
13 [\(Dkt No. 65\)](#); *Quinn v. Walgreen, Co.*, Case No. 12-cv-8187, (S.D.N.Y.), [Motion](#)
14 [of Truth in Advertising, Inc. to File Brief as Amicus Curiae in Opposition to](#)
15 [Proposed Settlement, dated Nov. 19, 2014 \(Dkt No. 116\)](#) and [Amendment to](#)
16 [Settlement Agreement and General Release, dated Jan. 30, 2015 \(Dkt No. 141-1\)](#)
17 (after filing a motion for leave and an *amicus* brief opposing the terms of the
18 proposed settlement agreement, the parties renegotiated the agreement and
19 revised the injunctive relief to include permanent and broader labeling
20 restrictions).

21 Moreover, 18 class members who objected to the proposed settlement in
22 this case have specifically cited to and adopted a portion of TINA.org's
23 opposition. *See* Objections to Class Action Settlement and Notice of Intent to
24 Appear at Final Approval Hearing, dated Mar. 24, 2015 (Dkt No. [121](#)), at 34-35,
25 fn. 20 ("It was also unfair to create an arbitrary threshold of \$750, below which
26 Business Opportunity Claimants are relegated to token claims of \$20 or less.
27 Objectors adopt the arguments made in the brief of Amicus Truth in Advertising,
28

1 Inc. at pages 9-11.”). Thus, to argue that TINA.org’s opposition is not in line
2 with class members’ interests is simply incorrect.

3 TINA.org’s sole motivation for its filing is to provide the Court with its
4 unique expertise and perspective as to the impact that this proposed settlement
5 will have on the approximately 1.5 million consumers that will be affected by it.
6 TINA.org’s Motion for Leave and accompanying *amicus* brief are entirely
7 independent and are not supported or motivated in any way – financially or
8 otherwise – by any outside parties or organizations.¹

9 Finally, as for the 11 cases plaintiffs cite in support of their argument that
10 TINA.org’s perspective is unhelpful, only two of those cases actually denied
11 motions for leave to file *amicus* briefs, and neither is relevant here as the
12 proposed *amici* in both those cases had the same interests and objectives as the
13 plaintiffs, thus failing to provide a new perspective or information. *See Sierra*
14 *Club v. Fed. Emergency Mgmt. Agency*, No. CIV. A. H-07-0608, 2007 U.S. Dist.
15 *LEXIS 84230*, at *10 (S.D. Tex. Nov. 14, 2007); *Merritt v. McKenney*, No. C 13-
16 *01491 JSW*, 2013 U.S. Dist. *LEXIS 122009* (N.D. Cal. Aug. 27, 2013).

17 For the foregoing reasons and those previously articulated, TINA.org respectfully
18 requests that the Court grants its Motion for Leave to File Brief as *Amicus Curiae*
19 in Opposition to the Proposed Settlement.

20 DATED: April 27, 2015

Respectfully submitted,

21 FINCH, THORNTON & BAIRD, LLP

22
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27 ¹ While plaintiffs admit that Rule 29 of the Federal Rules of Appellate Procedure do not apply to the
28 motion at hand, they nonetheless argue that TINA.org has not provided important disclosures required
of *amici* to disclose any possible bias or motives it may have. Even if Rule 29 did apply, which it does
not, TINA.org is not owned by any corporation and is a non-partisan organization.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been filed electronically on this 27th day of April 2015 and is available for viewing and downloading to the ECF registered counsel of record:

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8 DATED: April 27, 2015

Respectfully submitted,

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